IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
JAIPUR BENCH, JAIPUR.

O R D E R

Rameshwar
Vs.
State of Raj. & Anr.

S.B. CIVIL WRIT PETITION NO.933/2007.

Date of Order :- 4/5/2007.

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri S.B. Gupta for the petitioner.

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This writ petition has been filed by the petitioner with the prayer that the respondents may be directed to pay to him a sum of Rs.10 lacs as compensation for the torture, cruelty, inhuman and third degree treatment given to him by the concerned police officails while he was in judicial custody from the period 13/4/2000 to 17/4/2000. It has been contended that petitioner was falsely implicated in the criminal case for

offence u/S.8/20 of the N.D.P.S. Act, 1985 due to which reason he was taken into police custody and was subjected to torture. The petitioner filed a complaint on 16/8/2000 against the police officials in the Court of Judicial Magistrate, First Class, Indergarh which was sent for investigation to the Police Station, Indergarh u/S.156(3) Cr.P.C. Since the complaint was made against the police officials themselves therefore, there was no proper and fair investigation and ultimately the F.R. was submitted. The petitioner was falsely implicated was proved when he was discharged by the Court on 26/3/2002. The petitioner filed a protest petition and the learned Magistrate has disallowed the F.R. and taken cognizance against the police officials by order dated 11/5/2006. Learned counsel for the petitioner in support of his arguments has cited the judgment of Hon'ble Supreme Court in **D.K.**

Basu Vs. State of West Bengal, AIR 1997 SC 610. On the strength of this judgment, he argued that the respondents should be commanded to make payment of compensation to the petitioner.

Although respondents may have been proceeded against in a criminal complaint, but the question that the injuries sustained by the petitioner were caused by police official can be proved only by leading evidence. Counsel submitted that petitioner filed some representations and now filed this writ petition. These facts would be required to be proved by leading evidence. Such a determination cannot possibly be made in exercise of the writ jurisdiction. The judgment of D.K. Basu, supra, relied by learned counsel for the petitioner was one relating to custodial death and in that case death occurred in police custody in itself proved the liability of the police to explain how and why the person died while he was in their custody

and when he died during custody, any such proof can be had from the nature and number of injuries sustained by the deceased which gave rise to the presumption of torture. The aforesaid judgment, therefore, does not apply to the facts of the present case. Appropriate remedy for the petitioner in the facts of the present case would therefore be to file Civil Suit if so advised. The writ petition for determination of such disputed questions of facts can certainly be not entertained.

I do not find any merit in this writ petition. The writ petition is therefore dismissed as being not maintainable though with the aforementioned observations.

(MOHAMMAD RAFIQ), J.

RS/-